REMARKS

In response to the Office Action dated December 20, 2006, Applicants respectfully request reconsideration.

Claim objections

Claim 10 stands objected to as appearing to have the word "first" misspelled. Applicants have amended claim 10 to address the Examiner's concern.

35 U.S.C. § 103 rejections

Claims 1-8 and 10-14 stand rejected under 35 U.S.C. § 103(a) as being unpatentable over U.S. Patent No. 6,029,145 (Hawkins) in view of U.S. Patent No. 5,727,165 (Ordish) and the definition of Six Sigma obtained from Answers.com ("the Six Sigma article") and further in view of U.S. Patent. No. 6,119,097 (Ibarra).

Applicants respectfully request that the Examiner remove the finality of the office action dated December 20, 2006 as the Examiner has failed to make a *prima facie* obviousness rejection, as described herein.

Applicants respectfully assert that the Examiner's 35 U.S.C. § 103 rejection is improper for at least two reasons. First, the Examiner has not established a *prima facie* case of obviousness, and second, the use of the Answers.com reference that cites Wikipedia is not a proper reference.

Applicants are under no obligation to submit evidence of nonobviousness in the absence of a *prima facie* case of obviousness being proven by the Examiner. *See* M.P.E.P. § 2142. To establish a *prima facie* case of obviousness,

> three basic criteria **must be met**. First, there must be some suggestion or motivation, either in the references themselves or in the knowledge generally available to one of ordinary skill in the art, to modify the reference or to combine reference teachings. Second, there must be a reasonable expectation of success. Finally, the prior art reference (or references when combined) **must teach or suggest all the claim limitations**.

M.P.E.P. § 2143. Specifically, Applicants respectfully assert that the Examiner has not satisfied at least the third criterion of the *prima facie* case of obviousness. The Examiner has not provided a reference that discusses "a measure of performance" as recited in the respective independent claims.

By his own admission the Examiner admits that "none of the references show the specific limitations set forth in the claims...." Office action dated 12/20/06, p. 8. Indeed, even upon combining the references, the Examiner still does not assert that all of the claim limitations of the present application are disclosed by the cited references. Rather, the Examiner states that the claims "do not appear patentable as they are directed towards improving a specific process using specific points of measure that would be obvious to one of ordinary skill when applying the methodology of Six Sigma." *Id.* "Again, in other words it appears applicant is requesting a patent based on the application of Six Sigma to his own invention." *Id.* The Examiner appears to be asserting that upon combining the Hawkins, Ordish, and Ibarra, a person of ordinary skill in the art would be motivated to use Six Sigma to **come up with the idea** of generating a measure of performance. The Examiner, however, does not assert that the Six Sigma article **itself** discloses generating a measure of performance.

Furthermore, nor does the Six Sigma article suggest "generating a measure of performance" According to the Six Sigma article, "Six Sigma is a methodology to manage process variations that cause defects, defined as unacceptable deviation from the mean or target...." Six Sigma article, 1st ¶. Both of the Six Sigma methodologies consist of defining the process improvement goals that are consistent with customer demands. *Id.*, p. 2-3. The present claims are patentably distinct and do not recite "defects" or "customer demands." Rather, for example, independent claim 1 recites generating a post-trade measure of performance with respect to said first participant, **as a function of a difference between a start time and a time-of-completion**, (e.g., rather than being directly related to customer demands or a defect) the measure of performance being a function of a time elapsed between completion of successive ones of steps in a process for closing a trade.

Thus, for at least these reasons, the third prong of the *prima facie* case of obviousness has not been satisfied, and the claims are patentable over the cited references.

The Six Sigma article is not a proper reference against the present application for at least two reasons. First, the Six Sigma article does not antedate the filing date of the present application, and second, Wikipedia is not a reliable source of information that is citable by the Examiner.

Before embarking on an analysis under 35 U.S.C. § 103, the Examiner must determine whether the reference that the Examiner intends to cite can be considered prior art under 35 U.S.C. § 102. *See* M.P.E.P. § 2141.01(I). The content of any cited reference is determined **at the time the invention(s) was made**. *Id.* at 2141.01(III). Applicants acknowledge that there may be situations where a factual reference need not antedate the filing date of an application. The Examiner, however, does not assert that the Six Sigma article is being cited as such. The Six Sigma article appears to be printed from Answers.com, which itself is citing Wikipedia. Upon information and belief, the print date of the reference was December 6, 2006, according to the date stamp at the bottom of the second page of the copy of the Six Sigma article provided by the Examiner. Thus, the provided copy of the Six Sigma article does not antedate the filing date of the present application. Furthermore, Answers.com obtained the information on Six Sigma from Wikipedia, as evidenced by the "Wikipedia" at the top of the article, and by the disclaimer on page 7 of the copy of the Six Sigma article provided by the Examiner ("This entry is from Wikipedia...."). Furthermore, there is no evidence that the Six Sigma article as cited by the Examiner was the same prior to the filing of the present application—especially since the Wikipedia entry for "Six Sigma" was not even created until May 6, 2003, according to the history information associated with the Wikipedia article on http://www.wikipedia.com (a portion of the history information associated with Wikipedia's Six Sigma article is attached hereto as Exhibit A).

Wikipedia is not a reliable source of information and Examiners should not cite Wikipedia articles. In an e-mail received by the Applicant's representative, the Commissioner for Patents, Mr. John Doll stated "A decision was made to remove Wikipedia from our list of recommended sites since it is an 'open-content collaborative

encyclopedia' which enables users to edit its documents." See e-mail from Mr. Doll, dated 1/17/07, attached hereto as Exhibit B. Indeed, even Wikipedia itself disclaims the validity of the information provided therein (see e.g., the disclaimer on http://en.wikipedia.org/wiki/Wikipedia:General_disclaimer, a copy of which is attached hereto as Exhibit C). Thus, even if the Examiner could properly use the Six Sigma article, the accuracy of the information contained therein cannot be relied upon. For example, the current version of the Wikipedia Six Sigma article indicates that the article contradicts itself, is unbalanced, and does not provide sufficient context. Wikipedia.com Six Sigma article as of 1/23/07, at 10:26 am, attached hereto as Exhibit D.

Furthermore, as discussed above, even if the Six Sigma article can be cited by the Examiner as prior art against the present application, the present claims are still patentable. The Six Sigma article discusses "measuring" in the context of banking and marketing, but still does not disclose the specific limitations of the respective independent claims. For example, the Six Sigma article, alone or in combination with the other cited references, does not specifically teach generating a measure of performance that is a function of a time elapsed between completion of steps in a process for closing a trade (e.g., the Six Sigma article does not specifically discuss measuring a time difference between two communications).

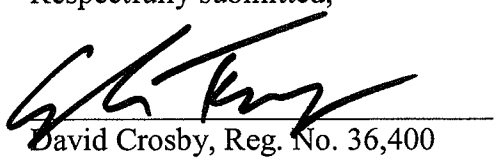
Thus, for at least these reasons, claims 1-8 and 10-14 are patentable over the cited references.

Conclusion

Based on the foregoing, this application is believed to be in allowable condition, and a notice to that effect is respectfully requested. If a telephone conversation with Applicant's representative would help expedite the prosecution of this application, the Examiner is invited to call the undersigned attorney at (617) 542-6000.

The Director is hereby authorized to charge any fees which may be required, or credit any overpayment, to Deposit Account 50-0311, Reference No. 20558-011. The Director is further authorized to charge any required fee(s) under 37 C.F.R. §§ 1.19, 1.20, and 1.21 to the abovementioned Deposit Account.

Respectfully submitted,



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